

## SENATE BILL No. 243

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 32-21-4-1; IC 32-28-3-5.

**Synopsis:** Mechanic's liens. Provides that the mortgage of a lender does not have priority over a mechanic's lien.

**Effective:** July 1, 2010.

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**Merritt**

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January 11, 2010, read first time and referred to Committee on Insurance and Financial Institutions.

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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

## SENATE BILL No. 243

A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 32-21-4-1, AS AMENDED BY P.L.129-2008,  
2       SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2010]: Sec. 1. (a) The following must be recorded in the  
4       recorder's office of the county where the land is situated:

5               (1) A conveyance or mortgage of land or of any interest in land.

6               (2) A lease for more than three (3) years.

7               (b) **Unless a statute specifically provides otherwise**, a  
8       conveyance, mortgage, or lease takes priority according to the time of  
9       its filing. The conveyance, mortgage, or lease is fraudulent and void as  
10      against any subsequent purchaser, lessee, or mortgagee in good faith  
11      and for a valuable consideration if the purchaser's, lessee's, or  
12      mortgagee's deed, mortgage, or lease is first recorded.

13              (c) This subsection applies only to a mortgage. This subsection  
14      applies regardless of when a mortgage was recorded. If:

15               (1) an instrument referred to in subsection (a) is recorded; and

16               (2) the instrument does not comply with the:

17                   (A) requirements of:

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(i) IC 32-21-2-3; or

(ii) IC 32-21-2-7; or

(B) technical requirements of IC 36-2-11-16(c);

the instrument is validly recorded and provides constructive notice of the contents of the instrument as of the date of filing.

SECTION 2. IC 32-28-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5. (a) As used in this section, "lender" refers to:

(1) an individual;

(2) a supervised financial organization (as defined in IC 24-4.5-1-301);

(3) an insurance company or a pension fund; or

(4) any other entity that has the authority to make loans.

(b) The recorder shall record the statement and notice of intention to hold a lien when presented under section 3 of this chapter in the miscellaneous record book. The recorder shall charge a fee for recording the statement and notice in accordance with IC 36-2-7-10. When the statement and notice of intention to hold a lien is recorded, the lien is created. The recorded lien relates back to the date the mechanic or other person began to perform the labor or furnish the materials or machinery. Except as provided in subsections (c) and (d), a lien created under this chapter has priority over a lien created after it.

(c) The lien of a mechanic or materialman does not have priority over the lien of another mechanic or materialman.

(d) The mortgage of a lender ~~has~~ **does not have** priority over all liens created under this chapter that are recorded after the date the mortgage was recorded; to the extent of the funds actually owed to the lender for the specific project to which the lien rights relate. This subsection does not apply to a lien that relates to a construction contract for the development, construction, alteration, or repair of the following:

(1) A Class 2 structure (as defined in IC 22-12-1-5);

(2) An improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5);

(3) Property that is:

(A) owned, operated, managed, or controlled by:

(i) a public utility (as defined in IC 8-1-2-1);

(ii) a municipally owned utility (as defined in IC 8-1-2-1);

(iii) a joint agency (as defined in IC 8-1-2.2-2);

(iv) a rural electric membership corporation formed under IC 8-1-13-4;

(v) a rural telephone cooperative corporation formed under

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1           IC 8-1-17; or  
2           (vi) a not-for-profit utility (as defined in IC 8-1-2-125);  
3           regulated under IC 8; and  
4           (B) intended to be used and useful for the production;  
5           transmission, delivery, or furnishing of heat, light, water,  
6           telecommunications services; or power to the public.  
7           **the lien of a mechanic or materialman.**  
8           SECTION 3. [EFFECTIVE JULY 1, 2010] IC 32-28-3-5(d), as  
9           amended by this act, applies only to a mortgage that is entered into  
10          or renewed after June 30, 2010.

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